

SUPREME COURT OF JUDICATURE (IRELAND)
(PROBATE DIVISION).

RETURN to an Order of the Honourable The House of Commons,
dated 12 May 1885 :—for,

COPIES "of the under-mentioned PAPERS, relating to those Provisions of the SUPREME COURT OF JUDICATURE (IRELAND) BILL which relate to the PROBATE DIVISION of that COURT :—

- I. MEMORANDUM by the JUDGE of the DIVISION ;
 - II. EXTRACT from the REPORT of Mr. R. W. A. HOLMES referred to in the said MEMORANDUM ;
 - III. OBSERVATIONS of the late LORD CHANCELLOR OF IRELAND upon the said MEMORANDUM."
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— I. —

MEMORANDUM on a BILL to amend the SUPREME COURT OF JUDICATURE ACT (IRELAND), in reference to the Provisions thereof which relate to the PROBATE DIVISION of that COURT.—Prepared by the Judge of the Division.

MORE property is administered under the Orders and Acts of the Court of Probate, *i.e.*, of the Judge and Principal and District Registrars of that Court, than under all the other ordinary Courts of Ireland together. These Orders and Acts require not only intelligence, but minute accuracy and very special knowledge, and are, for the most part, made and done *ex parte* at the instance of some one person interested in the property, in the absence of all others. Frequently these Orders and Acts involve difficulties which in *ex parte* proceedings may be easily overlooked, and which, when observed, demand for their solution considerable knowledge of law, intimate familiarity with the indispensable peculiarities of Probate practice, and some experience in the construction of writings.

It is obvious that the administration of this property ought to rest upon a secure basis, and that a system tried and proved to be satisfactory in Ireland and England ought not to be disturbed in Ireland unless it can be shown with certainty that the substituted system will be, if not superior, at least as safe, as that which has been tested by experience.

The Bill to amend the Supreme Court of Judicature Act (Ireland) proposes two important changes in the existing Probate system, *viz.* :—1. The abolition of a special Probate Judge, and, 2, the abolition of the existing District Registrars of the Court. It is convenient to observe upon the second proposal in the first instance.

PART I.

The District Registries are framed on the same lines and conducted on the same principles as those in England. The system has been successful. It WORKS EXTREMELY WELL, is the opinion of the Treasury Remembrancer,* given in a confidential report presented to the late Lord Chancellor of Ireland.

The Bill proposes that in Ireland this tried and successful system shall be changed. The same system in England is unquestioned. The duties of the District Registrars are to be transferred to the Clerks of the Peace and Crown of the counties. The Probate Act of 1857, sect. xxii., had enacted that Clerks of the Peace should be appointed District Registrars, either immediately or on the occurrence of a vacancy in the office; but in the year 1859, on recon-
sideration,

* Mr. R. W. A. Holmes is now Treasury Remembrancer. At the time when he made the Report referred to he held the office of Clerk of the Crown and Hansard.

sideration, this provision was deemed unwise, and it was repealed by the 22 & 23 Viet. c. xxxi., s. 5, with the concurrence of the sagacious and experienced judge then presiding in the Court of Probate, who thought it important that the unity of the staff of the Probate Court should not be broken by any foreign element. Is the present proposal made under any authoritative advice or for any sufficient reasons? Has it been approved of by the Judges, Registrars, or District Registrars of the Probate Courts of Ireland or of England? The Probate Judge in Ireland, notwithstanding distinct promises by the late Lord Chancellor and the late Chief Secretary for Ireland, has not been consulted. What persons could be so competent to advise as the Judges and Officers of the Irish and English Courts? *Nam et prius quam incipias consulto.* Of course Government might accept or reject the advice as it thought fit. Are there good reasons for this proposal, of a legal or economic character? If so, they would be good reasons for England as well as for Ireland. Is it possible that Ireland, because it is only Ireland, is selected as a suitable subject for an experiment?

The substance of the new scheme is a District Registry in each county of Ireland, and a District Registrar for each county in the person of the Clerk of the Peace and Crown, or some temporary officer. This principle, if fully carried out, will give District Registries to Wicklow and Kildare, and so there will be 30 or 31 District Registrars. Are there economical reasons for this proposal? "Mr. Chancellor of the Exchequer" is on the back of the Bill. At present the profits of the six District Registries, in which the officers are paid by salaries, largely exceed the expenses. In 1884 the fees were 7,456 £; the sum paid for salaries to the District Registrars and their clerks was 3,505 £, leaving a net profit to the Treasury of 3,951 £. The details will be found in the Appendix to this Paper, B. The officers of the remaining five District Registries are paid by fees, and these Registries are not a source of profit or loss to the Treasury; but if the salary system was extended to Kilkenny Registry, and to Mullingar united to Cavan, as has been suggested by the Judge, those Registries also would be sources of considerable profit. If 30 several Registries shall be established, the total of expenses will be increased, and the total of profits of District Registries will not be increased, except in rare cases of preference by a suitor of the local to the Principal Registry; a preference which will not bring any gain to the Treasury. The Bill seems to ignore the necessity of special clerks to be paid by salaries, and the certainty that when the Bill, if it shall pass, comes to be worked, considerable augmentations of salary will have to be made to the Clerks of the Peace and Crown. The District Registrar in the smallest county could not carry on the work without the aid of a specially instructed clerk. A note of the duties of District Registrars will be found in the Appendix A. Take the case of Belfast Registry as an illustration. The staff of that Registry is composed of the able and experienced Registrar, four permanent clerks, and one temporary clerk. These six officers give their whole time to official work, and the temporary clerk was allowed by the Treasury only because the business could not otherwise be done. Well, the Bill proposes to dissolve this excellent Registry, and to substitute an Antrim Registry in Belfast, and a Down Registry in Downpatrick. The Clerks of the Crown and Peace would find it impossible to work the two Registries with three clerks each, even were they to give their whole time to the Probate business, as the present District Registrar at Belfast does. But, of course, the new Registrars could only give a portion of their time to their Probate business, and the withdrawal of their personal supervision from the grants, assuming their competency, would involve the costs of clerks of high position and requirements. New costly offices with strong rooms, safes, &c., will have to be provided in some of the new Registries, and throughout Ireland many of the present official expenses will be multiplied.

During the last six years, by the direction of the Judge, and with the sanction of the Treasury, all the District Registries have been from time to time inspected by the Chief Registrar with beneficial results; defects have been supplied, errors corrected, diligence encouraged, uniformity established and enforced. These inspections ought to be continued, and should be made more frequently if the Registries were increased in number, and the Registrars persons without special training or experience. But the inspection of some 30 Registries, if only visited every second year, would seriously interfere with the primary duties of the Chief Registrar, and be attended with considerable expense. Can it be intended that

that under this Bill, the District Registrars are to be withdrawn from the supreme control of a Judge, or from direct dependence on the principal Registry? The control and the dependence are essential, not to the convenience only, but to the safety of the Probate system. Another element of expense in connection with the proposed change must be noticed, viz., compensation to clerks now employed in the District Registries. This is not noticed in the Bill, and may have been overlooked; but it cannot be intended to deprive a number of respectable men who, for many years, have given their whole time to the public service for salaries vastly inferior to those paid in the English Registries, whenever a District Registrar may happen to die or resign, of their only means of living, without reasonable substantial compensation. At present these clerks can only be removed by the Judge or with his sanction, and have, therefore, a safe tenure during good conduct. It has been suggested that the multiplication of District Registries, and the placing them under the management of the Clerks of the Crown and Peace, might induce or compel people not to deal with assets without a grant of probate or administration, and so increase revenue. Such a result is not probable. Omissions to administer are generally the result of a wish to evade payment of fees and stamps. Since 1857, the facilities for administration have been promoted by postal and railway improvements, and are adequate for the wants of all who desire a Grant. The Bill will do little in this direction. Take the proposed Registry at Downpatrick as an illustration. It is more convenient for the great majority of the people of Down to transact business at Belfast than at Downpatrick; and it must be remembered that a great deal of the work of the large Registries is carried on by correspondence, for which a small fee to the District Registrar has been recognised by the Treasury. The new District Registrars will not have any personal motive to hunt up defaulting next-of-kin and legatees. To do so would increase their labours, and, as they are not to receive fees, without any remuneration. It might be made the duty of the Clerks of the Crown to make inquiries in their counties, and inform the Inland Revenue Officers—a duty not connected with those of District Registrars. A note on this subject will be found in the Appendix C.

These financial considerations, however, are of secondary importance as compared with the necessity of securing, as far as possible, that the proper grant of assets shall be made to the person legally entitled to receive it. The extent of this property has been already noticed. These Grants are judgments *in rem*, binding *adversus*, until revoked. An Irish Grant, if the deceased had assets in England, can be turned into an English Grant by the mere administrative act of a clerk at Somerset House resealing the Irish parchment, and *vice versa*. It will be prudent for English people to seek the repeal of this resealing practice, if the secure system which now obtains uniformly in England and Ireland is to be superseded by the proposed experiment.

Everyone in any degree competent to form a sound opinion upon legal question, may see by a glance at the Index of such a Book as "Williams on Executors," the difficulties which occur as to the proper contents of Grants, and the proper persons to be Grantees. Such questions frequently arise, and may arise at any moment in any county of Ireland. Oversights and mistakes lead to expense, confusion, and loss of property. Is it alleged, has it been suggested, that the existing system of competent District Registrars, working in harmony with the assistance of the principal Registrars, under the control of an individual Judge, does not in Ireland, as in England, afford satisfactory security against such mistakes? Is it alleged, has it been suggested, that the change proposed by the Bill will afford increased security against such errors and their consequences? No such suggestion is to be found in Mr. Holmes' Paper, to which reference has been made.

One main cause of the satisfactory manner in which the District Registries in general are conducted, is the special knowledge of the Registrars. For this, previous special training is desirable, and is secured when clerks of some standing in the principal Registry are nominated to the office. It is also necessary that the work of each Registrar should be sufficiently large to afford him an opportunity of learning his lesson experimentally, and that no other duties should interfere with the discharge of his Probate duties; and, accordingly, under the present law and system, District Registrars must discharge their duties in person, and must attend daily at their offices. Is this wholesome and beneficial provision to be repealed, and are the new District

Registrars to be allowed to attend when they please? Some Clerks of the Peace in Ireland reside at a distance from the county town. Are the authority and control over the District Registrars which exist under the Probate Acts to be repealed or to continue? It would be a very strong presumption to make that the necessity of such control would cease because the number of District Registrars was trebled! Some years ago, a respectable, intelligent, educated man, under special circumstances, was nominated to a small District Registry. He had no previous training, and the work was not large enough to engage his mind or instruct him practically. From the first the work was badly done; and after a time he was dismissed by the Judge, with the sanction of the then Lord Chancellor of Ireland.

If, indeed, it be assumed that the only object of requiring a grant of assets is the collection of fees and stamp duties, of course any clerk provided with two forms, one for all cases of intestacy, and one for all cases of wills, and competent to work a sum in the rule of three, would be a fully qualified District Registrar, as competent as he would be to sell stamps and parchments across a counter; but if he is to be an agent for the administration of Probate Law, he must be competent for something more—fit to discharge duties which the present District Registrars, some Barristers, some Solicitors, and the rest trained either in the Principal Registry or the old Ecclesiastical Courts, are not entrusted to do, save under the supervision and with the assistance of the Principal Registrar, and subject to the authoritative control of an individual Judge. The duties of the Judge and the Chief Registrars, in relation to the District Registrars, are essential to the safe working of the system. But the proposed increase in the number of the District Registrars would increase the difficulty of the discharge of these duties. Some persons do not understand the paramount importance of the connection between the Principal and District Registries; a glance at the Appendix (A.) may convince them that the connection is vital to the system. How without it would uniformity of practice be maintained? and on this uniformity rights of property depend.

It is fit to observe, that experience proves—what indeed was, *a priori*, probable—that Probate business is best done in large District Registries. Nothing is to be desired as regards the Registries at Belfast, Cork, and Londonderry. The state of the small Registries, such for instance as Cavan and Ballina, is not so satisfactory. What will be the character of the petty Registries proposed to be established at Longford, Tullamore, Carlow, Fermanagh, &c., &c.?

A suggestion has been made, that there is no reason why a District Registrar, assuming him to be a thoroughly competent person, should be attached to or under the control of the Court. Can it safely be assumed that every one of the proposed thirty District Registrars will be *thoroughly* competent persons? That every one of them will be faultless? If this assumption was conceded, still connection with the Principal Registry, from the very nature of the case, is absolutely essential to the Probate system, and the Principal and District Registries would not work without a presiding Judge. Take an illustration. A case in which *absent minors* were interested was heard in a County Court; the parties before the Court entered into a consent, and probably the notice of the Judge was not directed to the matter. But the Clerk of the Crown and Peace, whose infallibility is to be assumed, drew up and certified a decree for a joint Grant to one of the executors named in a will, *and to another person not named in the will at all*. The Clerk of the Peace and Crown, fortunately, had no power to draw the Grant, and the matter was brought before the Judge, who varied the decree; but if the Clerk of the Crown and Peace had been also a District Registrar, he would have drawn up a Grant, which would have been simply void, and might have caused confusion and loss! The cases of *M'INERNEY* and *BELL*, in the fifth volume "Irish Law Reports," pages 553 and 409, may interest a lawyer!

PART II.

It is not necessary to say much upon the other topic mentioned at the commencement of this Paper, viz., the proposed abolition of a special Probate Judge. Opinions may be divided on the questions, Whether a Probate Division should be given up in Ireland, and retained in England? Whether Jury Trials of Probate and Divorce cases should be placed in the general *Nisi Prius* list of the Queen's Bench Division, or, as in England, reserved for a Probate Judge?

Whether

Whether hearings of such actions, without a jury, should be committed to the Judges of the Queen's Bench Division? Arguments have been urged for removing Jury cases from the exclusive jurisdiction of any one Judge; but the removal would increase costs in country cases, and for Hearings without a Jury, a Judge of the Chancery Division would seem a more satisfactory tribunal, if the Probate Division should be abolished. The grave objection to the abolition of a special Probate Judge lies in the proposed transfer from a single Judge to ten Judges of all the non-contentious and common form business of the Probate Division, of all the motions, and especially the *ex parte* motions, business of the Court, and of the duty of directing and governing the Officers of the Principal and District Registries. The difficulties and responsibilities involved in Common Form business, as defined in the Probate Act, 1857, exceed those of Jury Trials; more property depends on its due administration; and it must be borne in mind that errors at Jury Trials are generally noticed by counsel, and can be corrected at the time, or if necessary by an appeal.

The practice of the Court in relation to *ex parte* motions illustrates the caution necessarily observed. A document, called a Motion Paper, stating briefly the purpose of the application, and referring to the documents and affidavits relied on, must be lodged in the office. A Registrar then peruses and notes the Motion Paper. All the papers are then sent to the Judge, who reads them, and considers the Registrar's notes. On the day for hearing Motions, the Registrar attends the Judge first in Chamber, and then in Court, when the *ex parte* Motion is argued by counsel. Notwithstanding all this preliminary care, the Judge is sometimes obliged to reserve his decision, in order to consider further the construction of documents, the effect of affidavits, or the bearing of technical rules of Probate Law and Practice. This system is uniform in England and Ireland; and the Judges recognise these precautions as necessary for the safe administration of this non-contentious business. If this Common Form work shall be distributed amongst the ten Judges of the Queen's Bench Division, it will be found impossible to continue this hitherto successful practice; and one-tenth share of the Common Form business of the Irish Court is too limited in extent to enable a Judge to acquire that experimental knowledge, without which he must be incompetent for the discharge of his duty. The business of the Court in relation to Motions on Notice, is somewhat less difficult and responsible; but for this, also, experimental knowledge is essential, a knowledge which should embrace not only all the details of Probate Law, but of the Practice of the Court, and of the Principal and District Registries.

It has been mentioned that a Registrar attends the Judge in Chamber. On such occasions the Judge is consulted as to any matters which may require his directions in relation to the Principal or District Registries, and questions of difficulty referred by the District Registrars are brought under his consideration. Matters of a pressing character arise from time to time in the Division, and the Judge is consulted at his residence by a Registrar. It has been found necessary that a vigilant and authoritative control should be exercised over District Registries. This will be, *a fortiori*, necessary if the number of District Registries shall be increased from 11 to 30, but this responsible duty could not be well discharged by a multitude of judges. If, as provided by the Judicature Act, 1877, the Probate Division shall be preserved, it will be well; if not, if the Division must be abolished, and jury trials must be remitted to the general *Nisi Prius* List, then let all the duties of the Judge of the Court of Probate, except those jury trials, together with Divorce and Admiralty business, be assigned to some single judge attached to the Chancery Division. Thus, without interfering with the economical objects of the Bill, a safe and successful system, substantially uniform in England and Ireland, may be maintained for the administration of the large property dependent on Probate Law and Practice.

This Paper has not been prepared from any personal motive; the object is the security of property in Ireland. It has been written, not in the interest of the few, but of the many. The small farmer, holding some 20 acres of land, and the small trader, with some 200*l.* lodged in a bank, are as much interested as the landlord and the merchant in the subject; nay, mistakes are more frequent in the Wills of the poor than of the rich, and the costs sometimes involved in correcting mistakes may be unimportant to the rich man, and serious to the poor.

APPENDIX.

(A.)

STATEMENT as to some of the DUTIES of the DISTRICT REGISTRARS, prepared by the PRINCIPAL REGISTRAR.

THE District Registrar must, on every application for a Grant of Probate or Administration, peruse all the papers. In Probate cases he must examine the original Will, and note alterations, erasures, and interlineations, and require affidavits in explanation thereof; he must examine the attestation clause, and, when necessary, obtain an affidavit as to due execution. In lutescency cases he sees that all parties, having a right to the Grant in priority to the applicant, are cleared off, and that proper security is given. He has power to issue Grants to Creditors, Grants *de bonis non*, and special Grants of every description. Solicitors are not obliged to attend at the District Registry in person, as in the Principal Registry; and a great portion of the business is transacted by correspondence, which frequently involves numerous letters and enquiries.

The District Registrar, having searched his books for unproved Wills, prior Applications, and Caveats, sends notice of every application for a Grant by next post to Principal Registrars, stating the particulars of the title, for the purpose of obtaining the requisite certificates from Principal Registry, authorising him to issue the Grant. He then prepares the Grant, and, when sealed, forwards an abstract of it, called a Calendar, to the Principal Registry, in order that the particulars may appear in the General Index, which is in daily use and searched by the public.

The District Registrar must send to the Principal Registry, every fortnight, a copy of every Will proved, and every Grant issued during the period; and the salaried Registrars, lists of fees received in each case, with the stamps equivalent in value attached thereto, and cancelled by him (*sic*). This secures the rights of the Inland Revenue.

The District Registrar receives personal applications, and prepares the necessary papers for a Grant, which, from the ignorance of the parties applying, frequently consume much time.

The District Registrar receives applications from the Supervisors of Inland Revenue under the Customs and Inland Revenue Act, 1891, and these involve generally a lengthened correspondence and a vast amount of trouble, the supervisors having no special training for the work.

The District Registrars receive and enter Caveats. They are applied to for Searches, Copies of Wills, Grants, and Affidavits, as well as Sealed and Certified Copies of Documents which can only be obtained in the District Registry.

(B.)

DETAILS OF FEES and SALARIES in DISTRICT REGISTRIES.

District Registry.	Total Fees Received in 1894.	Total Salaries Paid to District Registrars and Clerks.	Profit.
	£. s. d.	£. s. d.	£. s. d.
Armagh - - - - -	928 9 6	500 - -	428 9 6
Belfast - - - - -	2,737 13 6	1,165 - -	1,572 13 6
Cork - - - - -	1,308 5 3	675 - -	783 5 3
Limerick - - - - -	571 7 9	365 - -	306 7 9
Londonderry - - - - -	1,156 1 -	435 - -	721 1 -
Waterford - - - - -	694 11 9	405 - -	189 11 9
£.	7,466 8 9	3,505 - -	3,961 8 9

(C.)

NOTE as to CAUSES of LOSS of DUTIES.

1. THE impunity of offenders. This was brought under the notice of Lord Sherbrooke when Chancellor of the Exchequer.

2. The insufficiency or neglect of the provisions of the County Court Act, 1877, and Land Act, 1880, to secure the rights of the Crown when special administrators are appointed.

3. Some Banks pay out assets without an administration, upon a guarantee of indemnity.

— II. —

EXTRACT from the REPORT, dated April 1881, by Mr. R. W. A. Holmes, to the Lord Chancellor of Ireland, and the Presidents of the Common Law Divisions, on certain Offices not included in the Order of 20th December 1879.

DISTRICT REGISTRIES.

THERE are 11 District Registries specified in Schedule A. to "The Probates and Letters of Administration Act (Ireland), 1857," and by the 16th section of that Act "they are attached to and under the control of the Court of Probate." By section 17, the Lord Lieutenant in Council has power to add to or reduce their number and to change the Registry to a more convenient place within the District. Sections 50 to 57 inclusive deal with the jurisdiction and duties of District Registrars. By section 50, the jurisdiction of a District Registrar to grant Probates or Letters of Administration is limited to grants in Common Form, and to cases in which the testator or intestate had a fixed place of abode within his district. Section 52 requires him not to make grants in cases in which there is contention or in which it appears to him that Probate or Administration ought not to be granted in Common Form. Section 53 requires him to transmit to the Registrars of the Principal Registry a notice of every application which may be made to him for a Grant of Probate or Letters of Administration, and also requires that he shall not make any Grant in pursuance of any such application until he shall have received a certificate under the hand of one of the Registrars of the Principal Registry that no other application appears to have been made in respect of the goods of the same deceased person. The requirements of the last section are essential and would have to be observed under any system—i.e., as long as it is permissible to any person to apply to the *Principal Registry* for a Grant of Probate or Administration notwithstanding that the testator or intestate in respect of whose goods such application is made may have died within the limits of a District Registry; and there are obvious reasons why it should be always permissible (Sec. 63). If these requirements were not observed, it might often happen that two Grants in respect of the goods of the same deceased would be outstanding at the same time. Section 54 enables the District Registrar, when in doubt as to a Grant, to take the direction of the *Judge*, but as a matter of fact such direction is given by the Principal Registrars. So much as to the duties of the District Registrars.

With regard to their remuneration, some are paid by fees, others by salaries. The 115th section enables the Treasury "to order that the District Registrars, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively." The District Registrars of Belfast, Cork, Londonderry, Limerick, Waterford, and Armagh, and their Clerks, are paid by salaries; while the District Registrars of Ballina, Tuam, Cavan, Kilkenny and Mullingar are still paid by fees, and are required by the same section to pay the salaries of their Clerks out of their fees, retaining the residue for their own use. The highest salary is that paid to the District Registrar of Belfast, who has 600 *l.* a year. The Registrars of Cork, Limerick, and Armagh, have 300 *l.* each, and the Registrars of Londonderry and Waterford, 250 *l.* each. The total cost of the six District Registries in respect of salaries and allowances appears by the Estimates for the current financial year to be 3,500 *l.*

I have now given a short sketch of the existing system, from which it will be seen that the District Registries are, by statute, attached to and under the control of the Court of Probate—a control which the present Judge has enforced by requiring the Chief Registrar of the Principal Registry to visit the District Registries periodically, and report concerning them to him. It will also be seen that under any system that may be devised it will be impossible to

sever all connection between the Principal and District Registries. The present system works extremely well; but I think, if your Lordships were for the first time considering a plan for enabling persons to take out administration elsewhere in Ireland than at the Registry in Dublin, a more logical system than the present would be the result of your deliberations. The question naturally suggests itself, why should there not be an office in each county, at which applications for grants might be made, in respect of the assets of persons who had a fixed place of abode within the county at the time of their death. Why, for instance, should an executor be obliged to make application at Cavan when the testator had a fixed place of abode at Longford? The tendency of modern legislation is to equip each county with the most complete legal machinery in respect of all its criminal and civil business, nor is this a modern notion, but rather derived from the past. In theory, too, no objection could be urged against each county constituting in itself a complete autonomy, and, as a matter of fact, within the office of the Clerk of the Crown and Peace is transacted almost all the legal business of the county. The Clerk of the Crown and Peace acts now as the Registrar of the going judge of assize in criminal business, and as Registrar to the County Court Judge in both criminal and civil business, and in respect of the equity jurisdiction, now conferred upon the County Court Judges, discharges duties corresponding to those of the Chief Clerks in Chancery. Why should he not also be empowered to act as Registrar in respect of Probate business? Although, however, he has no power to issue grants of Probate or administration, he has even now duties to discharge, which are on the very fringe of matters testamentary. Under the 6th section of the Court of Probate Act (Ireland), 1859 (which was substituted for the 56th section of the Probates and Letters of Administration Act (Ireland) 1857), the County Court Judge is invested with "the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of Probate of the will or Letters of Administration of the effects of any deceased person," whose personalty is under 200 *l.* and real property under 300 *l.*, and who had, at the time of his death, a fixed place of abode within the jurisdiction of the County Court Judge; and this jurisdiction has been extended by the County Officers and Courts (Ireland) Act, 1877, s. 46, to cases in which the personalty does not exceed 500 *l.* and the annual value of the lands does not exceed 30 *l.* On a decree being made by the County Court Judge, pursuant to these powers, the Clerk of the Crown and Peace is required, by the 59th section of the Act of 1857, to transmit to the District Registrar a certificate of such having been made, which certificate founds the authority of the District Registrar to issue the grant, just as a decree by the Judge of the Court of Probate is the authority for the Registrars of the Principal Registry to issue a grant. Now why should not the Clerk of the Crown and Peace, instead of transmitting the certificate to the District Registrar, be empowered to act upon the decree himself and issue the grant? He has acted as the officer in respect of the *contentious* jurisdiction conferred upon the County Court Judge, why should he not be allowed to act as the officer in respect of the *non-contentious* jurisdiction now exercised by the District Registrar? If you invest the judge with contentious, why not invest the officer with non-contentious jurisdiction? To my mind there is a logical sequence. If then there is no logical reason why in a *contentious* case before the County Court Judge the Clerk of the Crown and Peace should not act on the decree, and issue the grant, there is also no reason in the world why he should not take the place of the District Registrar in *all* cases. Then, again, under The Landlord and Tenant (Ireland) Act, 1870, s. 59, and The County Officers and Courts (Ireland) Act, 1877, s. 47, the County Court Judge has power to appoint a person to be an administrator limited to the purposes of these Acts, and any such limited administrator shall, for all the purposes of these Acts, represent the deceased as if the deceased had died intestate, and administration had been duly granted to such limited administrator. In all such cases the Clerk of the Crown and Peace of course records the orders. And again, under "An Act for the Relief of Widows and Children of Intestates where the personal estate is of small value," 36 & 37 Vict. c. 52 (amended by 38 & 39 Vict. c. 27), the Registrar of the County Court (*i.e.*, in Ireland

the

the Clerk of the Crown and Peace, *see* Section 10, 14 & 15 Vict. c. 57), is required, when applied to in cases where the whole estate and effects of an intestate do not exceed 100*l.*, "to fill up the usual papers required by the Court of Probate to lead to a grant of administration," and to swear the applicant, and to attest the execution of the administration bond according to the practice of the Court of Probate and to transmit these papers by post to the Registrar of the Court of Probate, who is required to make out and seal the letters of administration and transmit them by post to the Clerk of the Crown and Peace, to be by him delivered to the party applying for the same. Surely it is too absurd to require the Clerk of the Crown and Peace, who must be a solicitor, and will usually be one of ability and eminence in his profession, to take every step except the final one of making out the letters of administration, which he could accomplish while the applicant was waiting in his office. There was some reason for taking this precaution when the Clerks of the Peace were neither required to be professional men nor to do their duties in person, but this reason can no longer exist when the Clerk of the Crown and Peace must not only be a solicitor, but, owing to the importance of the office and the amount of the salary, an eminent solicitor. And upon this point it is worthy of note that District Registrars of the Court of Probate need not apparently have any professional qualification—at least we may infer so from the fact that persons have been appointed who had no such qualification—although in the 25th section of the Act of 1857, which provides that no person shall be appointed a "Registrar" who shall not be a Barrister or a Solicitor—the word "Registrar" would seem to include "District Registrar," for if it does not, it is hard to see why it was provided by the amending Act of 1859 (22 & 23 Vic. cap. 31, sec. 5), that "Clerks having served five years in the Principal Registry of the Court of Probate shall be eligible to be appointed District Registrars of the said Court"—quite an unnecessary provision if there were no qualification for the office.

There can, however, be no second opinion that the Clerks of the Crown and Peace who, as *Solicitors*, possess one of the qualifications required for the Office of Chief Registrar of the Principal Registry would be thoroughly capable of performing the duties now discharged by the District Registrars. And apart from the great public convenience in having an office in each County for issuing Grants of Probate and Administration, I believe that the Revenue would be greatly benefited thereby. It is well known that the country has not derived from Stamp Duty on Grants of Probate and Administration the increased revenue which might have been anticipated from the considerable property which passed to the tenant farmers of Ireland under the provisions of the Land Act of 1870.* There must be a great number of cases in which persons succeeding to considerable interests never clothe themselves with the necessary representation. I believe that if there were an office in each county from which grants could issue, the detection of such cases would become comparatively easy. For instance, there might be some arrangement made under which the Clerks of the Crown and Peace, the Registrars of Births, Deaths, and Marriages, and the Inland Revenue could be placed in privity with each other, in relation to cases of deceased persons who had been possessed of substantial property in the county. The District Registrar of Births, Deaths, and Marriages might be required to ascertain from the person registering the death whether the deceased died testate or intestate, and to inform both the Inland Revenue Department and the Clerk of the Crown and Peace of the result of his inquiry. The Clerk of the Crown and Peace is now in a position by means of the General List of Jurors (which gives the place of abode, the title, quality, calling, or business, the annual value of rated property, and the place of property of every juror in the County), to inform the Inland Revenue Department of the death of any person possessed of property in the county; and, if he were also the Probate Officer, he would be able to state whether administration had been taken out of the goods of the deceased, and could also advise in what cases proceedings should be taken. Supplied with such trustworthy information, the Inland Revenue Department would be in a position to enforce the penalty against persons interfering in the management of the assets of deceased persons, without obtaining probate or letters of administration; and if their present powers

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* Still more considerable under the Land Act of 1881.

are not sufficient for the purpose, it would be easy to increase them by fresh legislation. Indeed, with the almost complete legal machinery now provided for each county, no case proper for administration ought to escape the vigilance of that department.

Furthermore, the Clerk of the Crown and Peace, while acting as Chief Clerk in administration suits before the County Court Judge, would have many opportunities of requiring parties to clothe themselves with the necessary representation; and, in addition to the fact that the interests of the Revenue would be thus looked after, it would be greatly in the interests of the parties themselves, especially in poor cases, if the officer who required administration to be taken out was also the officer to issue the grant. It may be urged that if you cast these additional duties upon the Clerk of the Crown and Peace, it will be necessary to increase his staff, but there is ample provision for so doing in the County Courts Act, 1877. It may be further urged that so important an officer ought not to be under the control of the Court of Probate. Upon this point I would remind your Lordships that when the Judicature Bill was going through the House, it was seriously contemplated by the Legislature to abolish the Probate Court altogether, and I believe many eminent lawyers are of opinion that a separate Court for the trial of actions to establish wills is unnecessary. Now, if the Probate Division should ever be abolished, it is clear that the control of both the Principal and District Registries, *i.e.*, of the non-contentious business, would be a question for consideration. A very probable solution of the difficulty would be to make them independent of any direct control, for the majority of applications for grants are of the simplest character, and, indeed, there is hardly one which could not be satisfactorily determined by persons possessed of the experience and ability of the present Chief Registrar and the late Principal Registrars, while the case of an application involving real difficulty could be referred by rotation or otherwise to one of the Divisional Courts. I would also submit, from the sketch which I have given above of the jurisdiction and duties of the District Registrars that there is no real reason why the District Registrar—assuming him to be a thoroughly competent person, should be attached to or under the control of the Court, and that except for the necessity of forwarding to the Principal Registry, a notice of every application for a grant which he may receive, and awaiting the certificate of the Registrar of the Principal Registry, before issuing the grant, there is no reason why there should be any connection whatever (unless for the purpose of maintaining a uniformity of practice), between the District and Principal Registries.

— III. —

OBSERVATIONS of the late Lord Chancellor of *Ireland*.

I HAVE read and considered Judge Warren's observations on the proposed changes to be effected in the Probate Court by the Judicature Bill now before the House of Commons.

I am clearly of opinion that the proposal to transfer the Probate Jurisdiction on the first vacancy to the Queen's Bench Division is entirely right. I do not at all share in the apprehensions of the Judge as to the ineffective way its business may be done after such transfer. I am satisfied that the rights of the public and the suitors will, after such transfer, be guarded and maintained in the fullest manner. If any force might be supposed to attach to what the Judge urges, that when the Queen's Bench Division embraces 9 or 10 Judges, each would have so little to do in routine Probate business that he would not be likely to have experience or knowledge enough to properly discharge it, the whole objection would be met by giving the Lord Chancellor power to assign one particular Judge thereto, as in Bankruptcy, allowing the trial of contested wills to go with the ordinary *nisi prius* sittings; but, I must confess, I would have no misgivings of the Common Law Judges not being equal to master the practice of the Probate Court. I am satisfied they may be safely trusted therewith; at every turn of their daily business they discharge fully as important duties

duties to the law. As to a separate Court there really is not in this country sufficient business to warrant its maintenance; and its transfer to the Common Law Division will, I think, be a great improvement in a right direction.

With respect to District Registrars there is a good deal to be said in favour of maintaining a separate set of special officers for the business they have to do. I gave this matter a good deal of consideration last year when the question was brought before me by the Treasury; I was then of opinion, as I am now, that it is a better arrangement to constitute the Clerks of the Crown and Peace the persons to perform the duties now discharged by the District Registrars. The Clerks of the Crown and Peace are, as a rule, highly intelligent officers; they will become more so every day. There is no mystery in a District Probate or the business connected therewith, and I think it is of much importance that there should be in each county a central office where business of this kind should be done, and so done as part of the ordinary duties of the Clerk of the Crown. If this was followed out, in time the salaries of District Registrars would disappear altogether. The proper supervision of the County Probate business in the offices of the Clerks of the Crown and Peace would, of course, be the subject of rules to be made when the transfer would first take place, and it may be assumed that those rules will insure a careful and accurate performance of the work proper to be done. I do not enter on the question of compensation of the Clerks to the existing Registrars; that is for the Treasury.

(signed) *Edward Sullivan, C.*

7 April 1885.